

REMARKS

Entry of the foregoing, reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks which follow.

I. Substance of Examiner Interview

Applicants thank Examiner Bao Li and her Supervisor Bruce Campell for the interview with Applicant's representative on November 18, 2008, regarding the present application and proposed claim amendments that may place the application in condition for allowance.

During the interview, the participants discussed the references cited in the July 21, 2008 Office Action. The Examiner and her Supervisor agreed that amending the method claims by excluding administration of HCV NS5a DNA should be sufficient to overcome the outstanding 35 U.S.C. §§ 102 and 103 rejections over the Paliard et al. references, as these references are directed to methods comprising the administration of NS5a (*see also* the Office Communication (Examiner Interview Summary record) created November 18, 2008). The Examiner's and Supervisor's helpful comments and suggestions are greatly appreciated.

II. Claim Amendments

Further to the interview, and in response to the Office Action dated July 21, 2008, Applicants submit the foregoing amendments to the claims. By the amendments to the claims, claims 22-27, 29, 36, and 38-40 have been amended; claims 18-21, 28, and 30-35 have been canceled; and new claim 41 has been added. Support for the amendments can be found throughout the application as filed. In particular, support for the negative limitation "said method does not comprise administering a nucleotide sequence coding for an NS5a polypeptide of a HCV" in claims 29 and 38 can be found at least at page 4, lines 1-15 of the specification (indicating that the combination of the NS3/NS4 polyprotein and the NS5b polypeptide, as well as nucleotide sequences encoding the same, are more effective in inducing an immunogenic response than compositions that also comprise NS5a).

Further amendments to the claims have also been made to clarify the claim language, for consistency, and to bring the claims into better conformance with U.S. patent practice.

These amendments are merely editorial in nature and are not intended to change the scope of the claims or any elements recited therein.

The amendments to the claims, including cancellation of claims, have been made without prejudice or disclaimer to any subject matter recited or canceled herein. Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new matter has been added, and entry of the foregoing amendments to the above-identified application are respectfully requested.

III. Response to Claim Rejections under 35 U.S.C. § 102 and/or § 103

Claims 21-23, 26-28, 38 and 39 have been rejected under 35 U.S.C. § 102(b) or (e) as allegedly being anticipated by WO 01/30812, U.S. Patent No. 7,285,539, or U.S. Patent No. 6,562,346 (each to Paliard et al.). In addition, or in the alternative, claims 29, 32, 34, 36-37, 39 and 40 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the Paliard et al. references.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, the claims have been amended herein as described above. In particular, claims 21 and 28 have been canceled, rendering the § 102 and/or § 103 rejections moot as to those claims. In addition, claims 29 and 38 have been amended to recite that the methods do not comprise administering a nucleotide sequence coding for an NS5a polypeptide of a HCV. As discussed in more detail in the prior response filed on October 21, 2008, the Paliard et al. references do not teach or suggest a method for administering polynucleotide sequences encoding only NS3NS4 and NS5b, and not NS5a.

Thus, Applicants respectfully request reconsideration and withdrawal of these rejections.

IV. Response to Claim Rejection Under 35 U.S.C. § 101

Claim 28 has been rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter.

Claim 28 has been canceled. Thus, this rejection is moot, and Applicants respectfully request reconsideration and withdrawal of the same.

V. Response to Claim Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 32 and 34 have been rejected under 35 U.S.C. § 112, first paragraph, as purportedly failing to comply with the enablement requirement.

Claims 32 and 34 have been canceled. Thus, this rejection is moot, and Applicants respectfully request reconsideration and withdrawal of the same.

VI. Response to Double Patenting Rejection

Claims 38 and 39 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 10-11 of co-pending U.S. Patent Application No. 11/723,638.

Applicants request that this rejection be held in abeyance until allowable subject matter is indicated.

CONCLUSION

This response is made without prejudice or disclaimer to any non-elected subject matter, and Applicants reserve the right to file one or more continuation and/or divisional applications directed to any non-elected subject matter.

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.


In the event that there are any questions related to this response, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney at the below-listed telephone number concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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